

OCT 5 2011

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOSE ESQUIVEL MENDEZ, a.k.a.
Alberto Perez-Lopez,

Defendant - Appellant.

No. 09-10372

D.C. No. 1:07-cr-00058-LJO

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Lawrence J. O'Neill, District Judge, Presiding

Submitted September 27, 2011**

Before: HAWKINS, SILVERMAN, and W. FLETCHER, Circuit Judges.

Jose Esquivel Mendez appeals from his jury-trial conviction for various drug offenses and avoidance of examination by immigration officers. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Esquivel Mendez contends that his trial counsel provided ineffective assistance. Specifically, he contends that counsel failed to argue for the admissibility of testimony under either Fed. R. Evid. 803(3) or *Mutual Life Ins. Co. v. Hillmon*, 145 U.S. 285 (1892), and that counsel failed to “preserve” the government’s plea offer or determine when it expired. We decline to review this claim on direct appeal because there is neither a sufficiently developed record, nor evidence of such obvious denial of adequate representation, to warrant departure from the rule that claims of ineffective assistance are generally inappropriate on direct appeal and should be raised in habeas corpus proceedings. *See United States v. McKenna*, 327 F.3d 830, 845 (9th Cir. 2003).

AFFIRMED.